

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

MARCH 15, 1993

Mr. Allen M. Carton
Deputy Director
Directorate of Military Programs
U.S. Army Corps of Engineers
Department of the Army
Washington D.C. 20314-1000

Dear Mr. Carton:

This letter responds to your request of October 1, 1992 for clarification of the ability of the U.S. Army Corps of Engineers to perform engineering services for federal agencies, including the Department of the Army. More specifically, you asked two questions related to the requirement that "independent, registered, certified engineers" certify that a hazardous waste management unit has been closed in accordance with the approved closure plan as required by EPA's regulations implementing the Resource Conservation and Recovery Act (RCRA). This letter revises and supersedes my correspondence to you on December 21, 1992 since your office requested a clarification of that letter regarding the authority of authorized states.

You first asked whether an authorized state can interpret the regulatory language "independent, certified, professional engineer", found at 40 CFR sections 264.115 and 265.115, to require that the professional engineers be registered in the state where the hazardous waste facility that they are inspecting is located. You noted that different authorized states have different interpretations of this phrase. You further pointed out that the language does not appear to specify where the engineer must be registered. You request EPA's interpretation of the phrase as it applies to the Corps.

We agree that the regulatory language of sections 264.115 and 265.115 on its face does not require engineers to be registered in the state where the hazardous waste management facility is located. However, if that same regulatory language is adopted by a state and becomes part of that state's authorized RCRA program, the state would generally be able to interpret the regulatory language to have a more stringent effect than the federal interpretation.

The second issue concerned the regulatory requirement that certification of compliance be performed by an "independent" professional engineer. You ask if a professional engineer in the Army Corps of Engineers would meet the criterion of "independent" when performing work for another federal agency or for the U.S. Army.

The attached December 15, 1987 memorandum entitled "Hazardous Waste Tank Regulation Clarification" addressed this issue. That memorandum responded to an inquiry by the Utah Bureau of Solid and Hazardous Waste concerning whether an engineer in the Army Corps of Engineers would meet the criteria for an independent, qualified, professional engineer for purposes of assessments, installation, and/or testing for Army facilities. There, the Agency determined that the Corps was considered a separate entity from the Army, and, as such, the Corps could provide the needed certifications.

Because this 1987 determination is applicable to the instant situation, an engineer in the Corps would be able to certify compliance with RCRA regulations for a federal facility, other than one under the direct command of the Corps of Engineers.

If you have any questions concerning these responses, or would like to discuss the issues further, please contact Tina Kaneen of the Office of General Counsel (202 260-7713) or Jeff Schwartz of the Permits and State Programs Division (703 308-8627).

Sincerely Yours,

Sylvia K. Lowrance, Director
Office of Solid Waste

Attachment